

STATEMENT OF THE CASE

Defendant-Appellant Leroy Fair pled guilty to burglary, a Class C felony. He was sentenced to six years executed pursuant to an open plea agreement, and he now appeals the sentence. We remand with instructions.

ISSUE

The following issue is dispositive: Whether the trial court erred by overlooking Fair's history of mental illness as a factor at sentencing.

FACTS

The trial court's sentencing order listed three aggravating circumstances: (1) that Fair was eligible to be found a habitual offender; (2) that Fair has convictions on six prior felonies and nine misdemeanors as well as two juvenile adjudications; and, (3) that Fair was on probation when he committed the instant offense. The trial court found Fair's guilty plea to be a mitigating factor.

During the sentencing hearing, Fair testified about substance abuse and mental health problems. The pre-sentence investigation outlined Fair's mental health problems, including schizophrenia, alcohol dependence, poly-substance abuse, personality disorder, major depression, and mental retardation. None of Fair's mental health problems were mentioned in the sentencing order.

DISCUSSION AND DECISION

The trial court must enter a sentencing statement that includes a reasonably detailed explanation for imposing a particular sentence. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007). We review the sentence for an abuse of discretion. *Id.* An abuse

of discretion occurs when the trial court enters a sentencing statement that overlooks reasons clearly supported by the record and advanced for consideration. *Id.*

In the present case, Fair’s lengthy history of mental health problems is clearly stated in the pre-sentence investigation report. Furthermore, Fair’s trial counsel made reference to the problems in his argument, and Fair made reference thereto in his allocution. We must conclude that the mental health problems were clearly supported by the record and advanced for consideration but were not mentioned by the trial court in its sentencing order. Accordingly, we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered the evidence supported by the record.¹

CONCLUSION

We remand with instructions that the trial court consider the mental health issues and make adjustments, if any, to the sentence. Remanded with instructions.

BAKER, C.J., and KIRSCH, J., concur.

¹ This case differs from *Nash v. State*, 881 N.E.2d 1060 (Ind. Ct. App. 2008), *trans. pending*. In *Nash*, the defendant contended that the trial court “assigned an improper weight to his mental illness.” *Id.* at 1064. As we note in *Nash*, weight is a determination for the trial court. *Id.* Here, however, it appears that the evidence was overlooked, and thus no determination of weight was ever made.